

1 Honorable Richard A. Jones
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 ALASKA PROTEIN RECOVERY, LLC,
11 an Alaskan LLC; TRIDENT SEAFOODS
12 CORPORATION, a Washington
corporation,

13 Plaintiffs,

14 v.
15 PURETEK CORPORATION, a California
corporation,

16 Defendant.

17 No. 2:13-cv-01429-RAJ

18 AGREEMENT REGARDING
19 DISCOVERY OF
20 ELECTRONICALLY STORED
INFORMATION AND ORDER

21 The parties hereby stipulate to the following provisions regarding the discovery of
22 electronically stored information (“ESI”) in this matter:

23 **A. General Principles**

24 1. An attorney’s zealous representation of a client is not compromised by
conducting discovery in a cooperative manner. The failure of counsel or the parties to
litigation to cooperate in facilitating and reasonably limiting discovery requests and
responses raises litigation costs and contributes to the risk of sanctions.

25 2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(2)(C) must be
26 applied in each case when formulating a discovery plan. To further the application of the

proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

B. ESI Disclosures

Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the parties, each party shall disclose:

1. Custodians. The five custodians most likely to have discoverable ESI in their possession, custody or control. The custodians shall be identified by name, title, connection to the instant litigation, and the type of the information under his/her control.

2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives, servers, etc.), if any, likely to contain discoverable ESI.

3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain discoverable ESI (e.g. third-party email and/or mobile device providers, “cloud” storage, etc.) and, for each such source, the extent to which a party is (or is not) able to preserve information stored in the third-party data source.

4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i).

C. Preservation of ESI

The parties acknowledge that they have a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. With respect to preservation of ESI, the parties agree as follows:

1. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and archive data; provided, however, that the parties shall preserve all

discoverable ESI in their possession, custody or control. All parties shall supplement their disclosures in accordance with Rule 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure where that data is created after a disclosure or response is made (unless excluded under (C)(2) or (D)(1)-(2) below).

2. Absent a showing of good cause by the requesting party, the following categories of ESI need not be preserved:

- a. Deleted, slack, fragmented, or other data only accessible by forensics.
- b. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
- c. On-line access data such as temporary internet files, history, cache, cookies, and the like.
- d. Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).
- e. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
- f. Server, system or network logs.
- g. Data remaining from systems no longer in use that is unintelligible on the systems in use.
- h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), *provided* that a copy of all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud” storage).

D. Privilege

1. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

2. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

3. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party, and its production shall not

1 constitute a waiver of such protection, if: (i) such information appears on its face to have
 2 been inadvertently produced or (ii) the producing party provides notice within 15 days of
 3 discovery by the producing party of the inadvertent production.

4 **E. ESI Discovery Procedures**

5 1. On-site inspection of electronic media. Such an inspection shall not be
 6 permitted absent a demonstration by the requesting party of specific need and good cause
 7 or by agreement of the parties.

8 2. Search methodology. The parties shall attempt to reach agreement on
 9 appropriate search terms, or an appropriate computer- or technology-aided methodology,
 10 before any such effort is undertaken. The parties shall continue to cooperate in revising
 11 the appropriateness of the search terms or computer- or technology-aided methodology.

12 a. A producing party shall disclose what search terms, if any, were
 13 used to locate ESI likely to contain discoverable information. If search terms were not
 14 used, the producing party shall disclose the search methodology used to locate ESI likely
 15 to contain discoverable information.

16 b. If search terms were used to locate ESI likely to contain
 17 discoverable information, a requesting party is entitled to no more than 5 additional terms
 18 or queries to be used in connection with further electronic searches absent a showing of
 19 good cause or agreement of the parties. The parties shall confer in good faith on the
 20 5 additional terms or queries. Focused terms and queries, rather than overbroad ones
 21 (e.g., product and company names), should be employed.

22 c. The producing party shall search both non-custodial data sources
 23 and ESI maintained by the custodians identified above.

24 3. Format. The parties agree that ESI will be produced to the requesting party
 25 with searchable text, in a format to be decided between the parties. Acceptable formats
 26 include, but are not limited to, native, TIFF (with a companion text file), and searchable

1 PDF. Unless otherwise agreed to by the parties, files that are not easily converted to image
2 format, such as spreadsheet, database and drawing files, should be produced in native
3 format.

4 4. De-duplication. The parties may de-duplicate their ESI production across
5 custodial and non-custodial data sources after disclosure to the requesting party.

6 5. Metadata fields. If the requesting party seeks metadata, the parties agree
7 that only the following metadata fields need be produced: document type; custodian and
8 duplicate custodians; author/from; recipient/to, cc and bcc; title/subject; file name and
9 size; original file path; date and time created, sent, modified and/or received; and hash
10 value.

11 DATED this 12th day of February, 2014.

14 By: s/Michael D. Helgren
15 By: s/Timothy B. Fitzgerald
16 By: s/Daniel M. Weiskopf
17 Michael D. Helgren, WSBA No. 12186
18 Timothy B. Fitzgerald, WSBA No. 45103
19 Daniel M. Weiskopf, WSBA No. 44941
20 McNAUL EBEL NAWROT & HELGREN PLLC
21 600 University Street, Suite #2700
22 Seattle, WA 98101-3143
23 Telephone: (206) 467-1816
24 Fax: (206) 624-5128
25 E-mail: mhelgren@mcaul.com
26 tfitzgerald@mcaul.com
 dweiskopf@mcaul.com
 Attorneys for Plaintiffs Alaska Protein Recovery,
 Inc. and Trident Seafoods Corporation

DATED this 12th day of February, 2014.

s/Thomas F. Ahearne
s/Rylan L.S. Weythman

Thomas F. Ahearne, WSBA #14844
Rylan L.S. Weythman, WSBA #45352
FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299
Telephone: (206) 447-4400
Facsimile: (206) 447-9700
Email: ahearne@foster.com
weytr@foster.com
Attorneys for Defendant PureTek Corp

ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED this 21st day of February, 2014.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge